

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 190 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE S.D.SHAH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

BIMAL MOTILAL RAJVANSHI

Versus

STATE OF GUJARAT & 1

Appearance:

MRS KETTY A MEHTA for Petitioner

SERVED for Respondent No. 1

MR DA BAMBHANIA for Respondent No. 2

CORAM : MR.JUSTICE S.D.SHAH

Date of decision: 26/12/96

ORAL JUDGEMENT

1. The petitioner came to be appointed as PSI in the services of the State Government, Home Department, vide order, dated 23.7.75. It is his case that he has been permanently absorbed in the said post by order, dated 19.2.78 and was serving as PSI since then. It appears that some adverse remarks were posted in his confidential dossier for the years 1977-78, 1978-79 and 1979-80. Such adverse remarks were not actually adverse but could be construed as mixed remarks and the petitioner keeping such adverse remarks in his mind acted very efficiently and thereafter no adverse remarks were communicated to him. In the year 1989 vide order, dated 24.6.89 persons junior to the petitioner were promoted to the post of PI(unarmed) though in favour of such persons there were adverse remarks and departmental enquiry and/or criminal proceedings were pending. Such persons were admittedly junior to the petitioner and the petitioner was left out and was not promoted to the post of PSI. The petitioner admittedly was at Sl.No.802 in the seniority list while the persons who came to be promoted to the post of PI and who were junior to the petitioner were posted at Sl.Nos 854,1087 and 1279 in the gradation list. The post was reserved for SC candidate and it was roster post meant to be filled by the SC candidate. Though the petitioner was a SC candidate eligible for promotion to the post of PI from the post of PSI(unarmed) he was not promoted to the post to which he was otherwise entitled. The petitioner, thereupon, made various representations including the one on 25th June, 1989 and 28th June, 1989, but to his utter surprise there was no response and the petitioner unfortunately suffered violation of his fundamental right of being treated equally in the matter of employment and was thus denied promotion to the post to which he was otherwise entitled.

2. Vide Order, dated 20.2.92 the Director General of Police promoted the petitioner to the post of Police Inspector (unarmed). The petitioner, thereupon, made representation to give him deemed date of promotion from the day persons junior to him were promoted, but, once again, it fell on the deaf ears and the petitioner was not promoted to the post to which he was otherwise entitled. In reply to various representations made by the petitioner, the D.G.P. vide his reply, dated 20.2.93 rejected the representation of the petitioner to give him deemed date of promotion from the day from which he ought to have been promoted, i.e. even the persons junior to

him were promoted to the post of Police Inspector. The petitioner thereafter made repeated representations to the superior authority, namely, Additional Chief Secretary for redressal of his grievance but he was simply informed that his representation was rejected by the Government and nothing could be done in the matter.

3. The claim of the petitioner to get promotion to the post of Police Inspector is stoutly resisted by the IGP by filing affidavit-in-reply of one Mr.A.K.Bhargava, Spl.I.G.P(Admn). It is his case in the affidavit-in-reply that the petition of the petitioner was liable to be rejected as none of his rights was violated and that he was not entitled to promotion to the post of PI from that of PSI. He referred to the adverse remarks posted in the confidential dossier of the petitioner between 1977-78, 1978-79 and 1979-80 as well as for the year 1986-87. It was his case that the record of the petitioner discloses that he had not made any representation to the competent authority against such adverse remarks and that such adverse remarks have become confirmed and therefore he was not entitled to the promotion to the post of PI. It was admitted that the petitioner belonged to SC and figured at Sl.No.815 in the gradation list of PSI(unarmed) published on 1st January, 1988. It is stated that the case of the petitioner was placed before the Selection Board for promotion in the meeting of the Selection Board held in the month of April, 1989, but he was not considered fit for promotion due to poor/adverse remarks, and therefore, he was not placed in the select list because he was not brought on select list on the ground of poor average record and accordingly he was not promoted to the post of PI while persons junior to him were promoted. It is his further case that thereafter when the petitioner was found fit for promotion his name was brought on select list and he was promoted to the post of PI. It is further stated that for the purpose of consideration for promotion it was not shown that the records of last five years of the employee were required to be seen and it was further stated that entire service record was required to be considered at the time of promotion. The progress of the employee over a series of years is to be considered and judgment is to be formed after careful examination of the confidential dossier. It was stated that criteria for promotion to the post of PI (unarmed) was and is proved merit and efficiency under the Rules, more particularly, Rule 53 of Gujarat Police Manual (Vol.I). It was therefore stated that since criteria was proved merit and efficiency adverse remarks placed in the dossier would play a role and that the petitioner was therefore not

found fit for promotion to the post of PI. It was admitted that though departmental enquiry was instituted against juniors of the petitioners they were promoted to the higher post, but it was stated that every individual was considered on his positive merit, and therefore, the petitioner can not justify his case by comparing his case with those of his juniors. It was further stated that the Selection Board consists of three members and after perusal of service records it considered the fitness/unfitness of employee for promotion to the post of PI and only those possessing merit are brought on the select list and promoted as per their placement in the select list. It is therefore submitted that if the petitioner was not selected by the Selection Board he was not entitled to any deemed date of promotion. It is also stated that the meeting of the Departmental Promotion Committee was held in 1991 for considering cases of promotion as per rules and regulations and the case of the petitioner was reviewed/examined and he was found suitable for promotion to the post by the Departmental Promotion Committee, and therefore, he was promoted to the post of Police Inspector.

5. From the affidavit-in-reply filed by the State Government, more particularly, the most responsible officer it becomes clear that the petitioner was denied promotion to the post of PI on altogether irrelevant, extraneous and immaterial factors not germane to selection for promotion to the post of Police Inspector. The post of Police Inspector is one which is to be filled in from amongst the cadre of PSI on the basis of proved merit and efficiency. It is not the case of applying criteria of seniority-cum-fitness for promotion. The criteria for promotion to the higher post being proved merit and efficiency it is positive merit and efficiency of a candidate which is required to be seen by the Selection Board and/or the Departmental Promotion Committee. If the criteria is one of seniority-cum-fitness, the negative test is to be applied and it is required to be found out as to whether the candidate was in any case unfit for promotion, and if he is found to be unfit, he is not entitled to promotion. The distinction between the two criterion is by this time established in large number of cases by this court as well as by the Apex Court. In the case of promotion by merit-cum-fitness, it is positive merit of the candidate which is required to be seen and not his fitness for the post. The adverse remarks posted in the confidential dossier therefore can not be only basis for denying promotion to an individual. When admittedly the criteria is proved merit and fitness it is required to be found

out by the Departmental Promotion Committee that the candidate was not possessing requisite merit and efficiency for promotion to the post of Police Inspector and his unfitness was not to be seen by reference to his service record of confidential dossier. Unfortunately, the Departmental Promotion Committee has, having known that the criteria for promotion is proved merit and efficiency, applied the test of seniority-cum-fitness and has, based on the confidential dossier found the petitioner to be unfit for promotion while promoting the candidates who were junior to the petitioner by applying similar standard. In fact, totally wrong standard is applied and positive fitness and efficiency of the petitioner for the promotion to the post of PI is not at all looked into by the Departmental Promotion Committee. This court has, time and again, reiterated the distinction between the criteria of seniority-cum-fitness for promotion and the criteria of proved merit and efficiency. It is the positive merit of a candidate which is required to be seen for his promotion when the criteria is of proved merit and efficiency. Negative test of a candidate being unfit for promotion is to be applied in the case of applying criteria of seniority-cum-fitness. Admittedly, the criteria for promotion in the present case was proved merit and efficiency and/or selection and while applying such criteria the Departmental Promotion Committee unfortunately found the petitioner to be unfit for promotion based on the adverse remarks posted in his confidential dossier without reference to his merit or efficiency. He was not interviewed on his merit and efficiency was not judged at all. From the confidential dossier proved merit and efficiency can not be established and even otherwise also there was nothing adverse in the confidential dossier of the petitioner which would disentitle him to promotion to the post of Police Inspector. Reliance placed by the respondents on remarks posted in the confidential dossier of the petitioner for the year 1986-87 would not be made basis for denying promotion to the petitioner. The remarks are too vague and nebulous and can not be said to be in any case adverse to a PSI in the discharge of his duties. In such confidential dossier it is said that the petitioner was "talking too much" and that he was having "ordinary look" and that he was "seeking direction or guidance from superior officers in ordinary matters". The first two out of three remarks can not be said to be adverse in case of any individual, more particularly, in case of a PSI who has to investigate and deal with the people at large. If such officer talks too much he is bound to and it can not be said that it was adverse quality which

would disentitle him to promotion. Similarly, that he has ordinary looks or better looks is not matter in anybody's hand as it depends upon the God Almighty who created him and he who gave him physical looks. Even the IGP himself may not be very often acceptable by his very looks to public eye, but then looks of an individual shall not be a criteria for denying promotion to a person or can not be a criteria for posting adverse remarks in the confidential dossier. In fact, the officer who was posting such adverse remarks is required to be prosecuted and is required to be immediately dropped from service. Placement of such irresponsible adverse remarks adversely affect the working efficiency of persons belonging to SC who are very often found to be ugly or are not looking as handsome as expected for the highly placed officer. Even they may not be handsome, but then to have abhorrence or contempt for bad look of an individual can not be the basis for denying promotion to such individual. It is unfortunate that such adverse remarks are made the basis for denying promotion to the petitioner and in fact such remarks ought to have been neglected because it is a matter in the hands of God Almighty who creates him. It depends on physique of his parents and looks can not be the basis for denying promotion. Totally irrelevant, nongermene and immaterial factors were taken into consideration for posting adverse remarks for the years 1986-87, 1987-88 which ought not to have been taken into consideration at the time of applying the test of proved merit and efficiency. The petitioner was therefore entitled to the post of PI from the day persons junior to him were promoted and the petitioner was in fact denied promotion on thoroughly irrelevant, immaterial and nongermene factors by applying wrong criteria and his positive merit and efficiency was not at all considered and unfortunately negative test was applied which was not required to be applied for considering positive merit and efficiency of a candidate for promotion to the post of PI. The action on the part of respondents is therefore required to be deprecated and it is required to be declared that the petitioner was otherwise entitled to be promoted to the post of PI.

7. In view of the aforesaid observations the respondents are directed to consider the case of the petitioner to promotion to the post of PI on his proved merit and efficiency and not by applying criteria of fitness-cum-seniority. Such exercise shall be carried out by the respondents within three months from the date of receipt of writ of this court and in case of failure on the part of respondents in carrying out such directions, the petitioner shall be deemed to have been

promoted to the post of PI from the day persons junior to him were promoted.

8. In the result, petition is allowed. Rule is made absolute to the aforesaid extent. No costs.

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